



700 West Liberty Street
Louisville Kentucky 40203-1911
502-540-6000
www.msdlouky.org

March 9, 2010

Douglas J. Wade, CECW-CE
U.S. Army Corps of Engineers
441 G Street, N. W.
Washington, DC 20314-1000

Subject: Comments to Docket number COE-2010-0007

Dear Mr. Wade:

I am writing on behalf of the Louisville and Jefferson County Kentucky Metropolitan Sewer District (MSD), in response to Docket Number COE-2010-0007, Federal Register Vol. 75, No. 26, February 9, 2010, concerning proposed changes to the Army Corps of Engineers' "Process for Requesting a Variance from Vegetation Standards for Levees and Floodwalls." Since MSD is the local sponsor of the Louisville Flood Protection Project, MSD has been routinely responsible for removing trees and other vegetation so as to protect the integrity of the floodwall. In light of MSD's responsibilities under Public Law, 104-303, the Water Resources Development Act of 1996, MSD is very concerned about the proposed changes to the variance process and for the reasons set forth in the following comments respectfully requests that the proposed changes to the Variance Standards not be adopted or implemented.

(1) Section 6 a.(1) provides that the variance must be shown to be necessary, and the only feasible means, to *preserve, protect and enhance natural resources, and/or the rights of Native Americans*. Nothing in this section allows for a variance to be granted for historical preservation. A good deal of the Louisville Floodwall is intertwined with an area of Louisville that has National Historical significance and these amendments would have a significant impact on the area.

One region of particular concern is near the Shawnee Park area and begins at the entrance of the Shawnee Golf Course located at Northwestern Pkwy and Bank Street to a natural high ground area along Northwestern Parkway. The affected area corresponds to the Corps' As-Built levee Stationing 342+25 to 361+50. Trees within this region were originally part of Fredrick Law Olmsted's Parkway design and were incorporated in the original COE design. In 1982, the Olmsted-designed Parks and Parkway system was listed in the National Register of Historic Places. Trees that were originally planted within this design concept thus, fall under the protection of federal law and Kentucky's Antiquities Act, KRS Chapter 164. Because the Olmsted Parkway is listed in the National Register of Historic Places, no tree removal should



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occur at all, and those trees that die off should be replaced as part of the historical design concept. Before any tree removal process begins, a review and analysis must be conducted pursuant to 36 CFR 800, Subpart b, § 106 to determine whether removal of these trees will have an adverse effect on the property as a cultural resource. It should also be noted that the base elevation of the majority of these trees are at or above the crest of the 1937 Flood. The adjacent levee represents freeboard three feet above that crest.

The proposed amendment to the variance process seems to contradict the existing protection for sites such as the Olmsted Parkway. The new amendments give no consideration to sites of historical or cultural significance. Accordingly, MSD would respectfully request that the proposed changes be amended to take into account such sites since the subsequent removal of trees would be a potential conflict between two federal laws, the Water Resources Development Act and the National Historic Preservation Act.

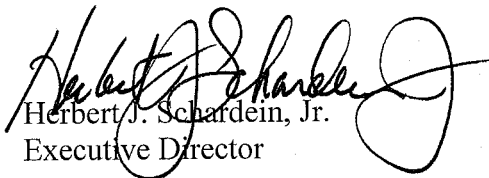
(2) Along the same lines as comment #1, there are areas near the floodwall that are above the 500 year flood level that were in existence when the floodwall was constructed. Some of these houses have fences, porches or other structures with ornamental shrubbery that would require a variance. Again, nothing in the proposal takes this into account.

(3) Lastly, the 11 item variance request submittal checklist in Section 7c. is unduly burdensome because it is not only extensive but will require significant time and money to complete for each variance request. Under the proposed process, all variance requests will require engineering analysis, drawings, a vegetation maintenance plan, environmental documentation, and several other items that result in what appears to be an extensive engineering analysis and reporting project. MSD estimates that any request would cost approximately \$12,000-15,000 just in engineering fees to prepare the applications. This figure does not include any coordination or resubmittal costs. Since variances have to be done individually or as a contiguous group, each request will have a significant impact on the finances of a public utility. The current process for granting variances is sufficient. It adequately protects the resources and neighborhoods of the community while ensuring that the integrity of the flood protection is not compromised. Accordingly, MSD would respectfully request that the proposed changes be amended to reflect the current standards and streamlined to minimize the cost of requesting a variance.

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In order to meet its responsibility as local sponsor of the Flood Protection Plan, MSD continues to monitor and inspect the floodwall and to when necessary, apply for variances. In its role and in order to meet its mandated duties, MSD believes the current standards are sufficient to protect the community from flooding. It is MSD's belief that the proposed amendments possibly conflict with existing law and only increase the cost to local sponsors while not affording any additional protection. Therefore, MSD submits these comments and respectfully requests that the proposed changes to the Variance Standards not be adopted or implemented.

Sincerely,



Herbert J. Schardein, Jr.
Executive Director

DSP:jlc

cc.: Col. Keith A. Landry, Louisville District Commander, U.S. Army Corps of Engineers
Stephen Durrett, PE, Chief Engineering Division, U.S. Army Corps of Engineers
Daniel Frank, PE, Levee Safety Program Manager, U.S. Army Corps of Engineers
Congressman John Yarmuth, 3rd District of Kentucky
Hon. Jerry E. Abramson, Louisville and Jefferson County Metropolitan Mayor
Mike Heitz, Director, Jefferson County Metropolitan Parks Department
Mimi Zinniel, Olmsted Parks Conservancy
Richard Jett, Louisville Metro Historic Preservation Officer
MSD Board
Mark Johnson
Saeed Assef
Loyiso Melisizwe
Tony Marconi
Paula Purifoy